

EXHIBIT 2

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

MARINA CUELLAR and
EDELMIRA CUELLAR,

Plaintiffs,

vs.

AVERA HEALTH PLANS, INC., and
JOHN MORRELL & CO.,

Defendants.

*
*
*
*
*
*
*
*
*
*
*

CIV. 12 –

SUMMONS

TO THE ABOVE-NAMED DEFENDANT, Avera Health Plans, Inc., registered agent, Mr. Chris Specht, 610 W. 23rd Street, Suite 1, Yankton, SD 57078:

You are hereby summoned and required to serve upon Scott G. Hoy, Hoy Trial Lawyers, Prof. L.L.C., attorneys for the above-named Plaintiff, 1608 W. Russell Street, Sioux Falls, South Dakota, 57104, an Answer to the Complaint which is herewith served upon you within thirty (30) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated at Sioux Falls, South Dakota this 29th day of November, 2012.

HOY TRIAL LAWYERS, PROF. L.L.C.



Scott G. Hoy
1608 W. Russell Street
Sioux Falls, South Dakota 57104
(605) 334-8900
Fax (605) 338-1918
Email - scott@hoylaw.com
Attorneys for the Plaintiffs

had Morrell's health insurance plan as of April 1, 2012.

5. That on April 1, 2012, Plaintiff Edelmira Cuellar was badly injured in a car/scooter accident, for which Edelmira and her parents sought her treatment within the Avera system in extensive medical care that is ongoing, which includes numerous surgeries for broken bones, plastic surgery for facial reconstruction, dental reconstruction, among other things. Plaintiff Edelmira Cuellar's medical bills to date exceed \$100,000.00.
6. That the health care agreement for John Morrell & Co. employees defines subrogation, stating in pertinent part that in the event the covered employee receives payment from (the at fault insurer) prior to assigning rights to the company, the covered employee shall reimburse the company for charges paid by this plan, less attorney fee's and expenses incurred in obtaining payment from the organization, up to the amount of the recovery received by the covered employee.
7. That contrary to the dictates of their employee agreement, defendants refused to pay the benefits, and then wrote letters claiming right to subrogation that never came into existence.
8. That Plaintiff Edelmira Cuellar's bills to this date remain unpaid, despite repeated requests for payment under her policy.
9. That Plaintiffs have paid their policy premiums at all times herein, and no claim has been made by Defendants that the policy is not in effect for non-payment.

10. That in correspondence, Defendants have taken the position that they have the right to assert the subrogation claim before they pay the benefits, which is contrary to state and federal law, and which is not in the plan or the handbook that is given to their employees.
11. That the policy limits from the at-fault driver of \$100,000 were offered on or about April 18, 2012, and a release for the full policy limits was signed on April 30, 2012.

BREACH OF FIDUCIARY DUTY

12. That both Defendants' actions in this case constitutes a breach of fiduciary duty, and that John Morrell's actions of placing their own interests ahead of their employees constitutes a breach of fiduciary duty that Morrell's undertook by way of opening this health plan. Further, that Avera Health Plans, Inc., has the same breach of fiduciary duty to Plaintiff, and in addition, that Avera's failure to adjust and follow the plan in accordance with its terms creates a conflict of interest, since Avera has now created a bill in which there is inappropriate collection efforts being made affecting the economic well-being and credit of the Plaintiffs, in a case where Avera is well aware that there is a policy in place that has been properly paid for.

EQUITABLE ESTOPPEL

13. That given that Defendants' actions are contrary to the health care plan that they publish to their employees, Defendants are equitably estopped from taking a position that they do not have to pay benefits.

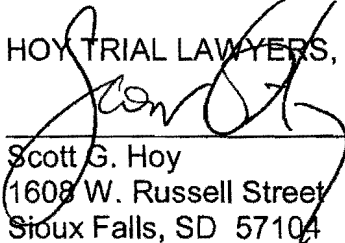
14. That as a result of Defendants' actions, Plaintiffs are entitled to a judgment for payment of all medical bills, plus interest and penalties that they have incurred as consequential damages; and, for all economic losses, either under tort or contract that Plaintiffs have suffered.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- (a) For an order that all medical bills be paid under the contract, plus interest and penalties;
- (b) For prejudgment interest;
- (c) For attorneys fees as determined by the Court under State and Federal law;
- (d) For such other and further relief, including equitable relief as the Court may find just and appropriate.

Dated at Sioux Falls, South Dakota, this 29th day of November, 2012.

HOY TRIAL LAWYERS, PROF. L.L.C.



Scott G. Hoy
1608 W. Russell Street
Sioux Falls, SD 57104
(605) 334-8900
Fax (605) 338-1918
E-mail: scott@hoylaw.com
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiffs by and through their counsel of record, and pursuant to SDCL § 15-6-38(b), hereby respectfully demand trial by jury of all issues so triable.



One of the attorneys for Plaintiffs